Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

REPLY

GTE Service Corporation ("GTE"), on behalf of its telephone and wireless communications companies, respectfully submits its reply to certain Oppositions to its Petition for Reconsideration[1] of the Second Report and Order in the above-captioned proceeding.[2] As discussed below, the record supports forbearance from TOCSIA regulation, parity of spectrum flexibility among CMRS services, and classification of enhanced services offered by CMRS providers as Title II services.

I. FORBEARANCE FROM APPLYING TOCSIA REQUIREMENTS TO CMRS PROVIDERS IS FULLY JUSTIFIED UNDER SECTION 332.

GTE's Petition demonstrated that enforcement of TOCSIA is not necessary to ensure just and reasonable rates or to protect consumers, and that forbearance would serve the public interest. GTE pointed out that there was no evidence that users of mobile public phone services have been subject to the types of abusive practices that TOCSIA was intended to prevent and that application of TOCSIA's branding

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1 Petition for Reconsideration or Clarification of GTE, GN Docket No. 93-252 (filed May 19, 1994) ("GTE Petition").

2 9 FCC Rcd 1411 (1994).

requirement would actually confuse customers who are roaming. In addition, GTE showed that application of TOCSIA to CMRS would engender substantial costs for all CMRS providers — regardless of whether they offer mobile public phone services — and that compliance would be impossible in many contexts. Finally, GTE explained that the decision not to forbear from enforcing TOCSIA is inconsistent with the finding in the Second Report and Order that tariff forbearance serves the public interest.[3]

GTE's request for forbearance from TOCSIA requirements was supported by Air Touch, which stated that, "even if the requirements of Section 226 could be applied lawfully to CMRS providers, the public interest would be significantly better served by forbearance."[4] The Personal Communications Industry Association also sought forbearance from TOCSIA regulation, noting that such regulation produces no benefits, is extremely burdensome, and yields absurd consequences.[5]

No party opposed forbearance from Section 226. MCI asked the Commission to defer action on GTE's request to Docket No. 94-33, but delay is unwarranted and counter-productive.[6] The record shows that immediate forbearance is fully justified. Moreover, compliance with TOCSIA produces continuing, substantial costs and requires CMRS providers to keep tariffs on file even though the Commission has found tariffing to be contrary to the public interest. Consequently, the Commission should promptly grant reconsideration of its decision not to forbear from applying TOCSIA to CMRS providers.

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3 See GTE Petition, at 2-6.

4 Opposition/Comments of Air Touch Communications, at 7 (footnote omitted).

5 Petition for Reconsideration of PCIA, at 5-6.

6 GTE is filing today comments in Docket No. 94-33 that reiterate the need for forbearance from applying TOCSIA requirements to all CMRS providers, regardless of size. However, GTE urges the Commission not to postpone relief until that docket is ripe for decision.

II. THERE IS BROAD-BASED SUPPORT FOR ENSURING THAT REGULATORY PARITY EXISTS FOR ALL TYPES OF CMRS.

GTE's Petition pointed out that the Second Report and Order failed to address significant differences between PCS regulatory rights and responsibilities, and those afforded to other CMRS offerings. In particular, GTE identified the fact that PCS providers may include private services on part of their spectrum, offer a wide range of fixed services, and take advantage of relaxed filing requirements. In contrast, cellular carriers are subject to significant constraints in all such respects.[7] Accordingly, in order to satisfy Congress' objective of establishing "a symmetrical regulatory structure that [] promote[s] competition in the mobile services marketplace . . . [and] serve[s] the interests of consumers while also benefiting the national economy,"[8] GTE requested the Commission, on reconsideration, to grant cellular carriers and other existing CMRS providers the same flexibility afforded to PCS operators to tailor their offerings and design them consistent with individualized needs.

A number of the commenting parties support grant of the relief requested by GTE. McCaw, for example, sought similar action in its petition for clarification in this docket, urging the Commission to "explicitly authorize all CMRS providers to offer

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7 Subsequent to the filing of the GTE Petition, the text of the Commission's Further Notice of Proposed Rulemaking in GN Docket No. 93-252, concerning the proposed conformance of technical, operational, and licensing rules for CMRS providers, was released. The Further Notice explicitly contemplates placing PCS operators and other CMRS licensees on unequal competitive footing with regard to their respective ability to include Private Mobile Radio Service ("PMRS") in the same spectrum licensed for CMRS operations. See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, FCC 94-100, ¶ 148 n.259 (May 20, 1994). GTE's comments in response to the Further Notice urged the Commission instead to accord to all existing CMRS licensees the same opportunities now granted to PCS providers. See Comments of GTE Service Corporation, GN Docket No. 93-252, at 4-5 (filed June 20, 1994).

8 Second Report and Order, 9 FCC Rcd at 1418.

private and commercial mobile services utilizing the same authorized frequency."[9] BellSouth supported the GTE position, aptly pointing out that the Commission "should impose on all CMRS providers those rules and regulations that will interfere as little as possible with the development of a competitive marketplace for mobile and wireless communications services."[10] Ensuring achievement of the Congressional goals requires the Commission to act promptly to resolve the current disparities affecting marketplace competitors.[11]

The only opposition to the GTE position came from Nextel and MCI. MCI argued that "'private carriage' authority is virtually certain to result in unreasonable price discrimination."[12] Nextel also (and not surprisingly) opposed grant of the same flexibility to all CMRS operators.[13] The objections interposed by Nextel to applying the same ground rules to all CMRS providers, however, do not justify denying the relief sought by GTE.

MCI's and Nextel's motives in opposing increased flexibility for all CMRS operators consistent with that granted to PCS providers are transparent. As pointed out by Pacific Bell and Nevada Bell in connection with the MCI/Nextel arguments alleging the Commission's erroneous extension of forbearance to cellular carriers:

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9 McCaw Petition, at 16.

10 BellSouth Response, at 6 (emphasis in original).

11 See Sprint Comments, at 10 ("Sprint agrees with GTE that such disparity between PCS providers and other CMRS providers is not warranted and fails to achieve the goal of similar regulatory treatment for similar mobile radio services."); Bell Atlantic Opposition, at 4 n.4; CTIA Oppositions/Comments, at 17 ("CTIA concurs that permitting CMRS operators, including cellular, such flexibility will ensure that they can offer the types of services more quickly that consumers want as well as maintain regulatory parity among similar services.").

12 Opposition of MCI, at 5.

13 Opposition of Nextel, at 6-8.

> MCI [and Nextel are] especially self-serving and extreme in [their] attempt to gain an unearned competitive advantage. MCI has formed an alliance with Nextel. Because Nextel has long been regulated on a very streamlined basis as a private carrier, under the Commission's rules Nextel will continue to avoid CMRS regulation for three years. During those three years, MCI's alliance with Nextel will make MCI/Nextel a huge force in the CMRS market. While [their] vast alliance will be nearly unregulated, MCI [and Nextel] seek to have [their] competitors heavily regulated as so-called "dominant carriers."

That MCI and Nextel are motivated by pursuing their own joint competitive advantage at the expense of fair competition in the marketplace is plain from the nature of the arguments marshalled by these two parties. The claims in opposition to the requested GTE relief and to the Commission's exercise of forbearance authority reflect no valid connection to public interest goals, and should be promptly and emphatically rejected.

III. THE COMMISSION SHOULD CLARIFY THAT ALL SERVICES MEETING THE DEFINITION OF CMRS ARE SUBJECT TO TITLE II.

GTE's Petition noted that some offerings made available by CMRS providers might be considered "enhanced" under the Commission's Part 64 rules. However, enhanced and basic services may be subject to differing obligations at both the federal and state levels, raising the prospect that competitive CMRS offerings may be governed by disparate regulations. To assure consistent treatment of such offerings, avoid unnecessary distinctions, and minimize state regulation of innovative services, GTE asked the Commission to clarify that any service meeting the CMRS definition will be subject to Title II, even if it might otherwise be considered "enhanced" under Section 64.702(a) of the Rules.[14] A few parties objected to GTE's requests, but their arguments are unavailing. As an initial (and dispositive) matter, Section 332 plainly states that any service meeting the CMRS definition is subject to Title II. There is no indication in the statute or the legislative history that an exception should be made for

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[14] See GTE Petition, at 11-12.

enhanced services.[15] Even if the issue were debatable, however, the arguments raised by opponents of GTE's clarification request are unpersuasive.[16]

Nextel claims that GTE is attempting "to gain relief from rules put in place to protect the public and markets beyond their landline monopolies from LEC cross-subsidies and discrimination."[17] Nextel fails to recognize, however, that the cost allocation and ONA policies it implicitly references have never applied to LECs' mobile services. In any event, the mobile service marketplace is fully competitive, minimizing the risk of anti-competitive behavior by any provider, whether affiliated with a LEC or a major long distance company.

MCI states that the relief sought by GTE is contrary to the purpose of the enhanced service rules, which is to avoid Title II regulation.[18] MCI's argument elevates form over substance. The primary intent of the enhanced services classification developed in Computer II was to detariff competitive service offerings. Treating enhanced services offered by CMRS providers as CMRS is fully consistent with this intent, since the Commission has forborne from tariffing CMRS.[19]

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15 The lack of such an indication is not surprising, since the Commission has never explicitly applied the enhanced service classification in the mobile context.

16 In addition to the parties discussed below, McCaw proposes that, instead of classifying enhanced services as CMRS, the "Commission should clarify that states are preempted from regulating any services offered by a CMRS provider, including those that might be characterized as enhanced." Opposition of McCaw, at 20. Importantly, while McCaw differs with GTE's analysis, it seeks the same end result: the certainty offered by a consistent regulatory scheme for all CMRS offerings.

17 Opposition of Nextel, at 11.

18 Opposition of MCI, at 3-4.

19 The only potential inconsistency with the detariffing directive arises from MCI's inappropriate effort to seek reconsideration of the Commission's CMRS tariff forbearance ruling.

NARUC and the California PUC raise three arguments.[20] First, they suggest that it is premature and speculative to assume state regulation will undermine the provision of innovative mobile services. However, in the dynamic mobile service marketplace, it would be imprudent to examine state regulation of particular service offerings on a case-by-case basis. Consumers will best be served by certainty in the marketplace, which allows service providers to introduce offerings without concern that they will face significant and unnecessary regulatory hurdles.

Second, the state parties contend that the requested clarification would require a substantial change in the criteria for identifying CMRS set forth in the Second Report and Order. Notwithstanding this claim, the definition of CMRS in the statute is clear, and the Commission's interpretation of that definition in the Second Report and Order provides precise guidance as to the classification of particular services. Accordingly, there is no need to alter the criteria adopted by the Commission.

Third, these parties argue that preemption of state regulation over enhanced service rates is insupportable under Section 2(b) of the Act and related precedent. However, Section 332(c)(3) explicitly denies state authority to regulate CMRS rates "[n]otwithstanding Section[] 2(b) ...."[21] Moreover, as the Commission explained in the Second Report and Order, "the standards for preemption established in [cases under Section 2(b)] do not apply to the rules adopted today."[22]

In short, if a service meets the statutory definition of CMRS, the inquiry is at an end. Regardless of whether an offering might be considered "enhanced" under the Computer II rules, Congress has directed that all CMRS services be subject to Title II. The Commission should rule accordingly.

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20 See Opposition of NARUC, at 2-3; Opposition of California PUC, at 4-5.

21 47 U.S.C. § 332(c)(3)(A).

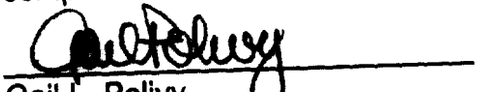
22 Second Report and Order, 9 FCC Rcd at 1506.

IV. CONCLUSION

For the foregoing reasons, and those stated in its Petition, GTE urges the Commission to (1) forbear from applying TOCSIA regulation to CMRS providers, (2) ensure regulatory parity for all CMRS offerings, including new PCS and existing cellular services, and (3) clarify that all services meeting the CMRS definition are subject to Title II, regardless of their potential classification as enhanced under Part 64 of the Commission's Rules.

Respectfully submitted,

GTE Service Corporation on behalf of its telephone and wireless communications companies

By: 

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June 27, 1994

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply" have been mailed by first class United States mail, postage prepaid, on the 27th day of June, 1994 to all parties of record.

Ann D. Berkowitz